

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P. No. 1215 (M/S) 2005

Hukum Singh

Vs

Addl. Civil Judge (J.D.) Dehradun & Ors.

Approved for reporting.

Not approved for reporting

Date of decision 08-8-06

Initial of Judge

Reserved

IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL

WRIT PETITION NO. 1215 (MS) OF 2005

Hukum Singh,
S/o late Shri Mona,
R/o 28, Nari Shilp Mandir Marg/28, Chakrata Road,
Dehradun, District-Dehradun. Petitioner.

Versus

1. Addl. Civil Judge (Junior Division), Dehradun.
2. Jai Prakash,
S/o late Shri Musaddi Lal,
R/o 28, Chakrata Road, Dehradun,
District-Dehradun.
3. Sundar Singh @ Surendra Singh,
S/o late Shri Musaddi Lal,
R/o 28, Chakrata Road, Dehradun,
District-Dehradun.
4. Sushil Kumar,
S/o late Shri Musaddi Lal,
R/o 28, Chakrata Road, Dehradun,
District-Dehradun.
5. Miss Sushma Chauhan,
D/o late Shri Musaddi Lal,
R/o 28, Chakrata Road, Dehradun,
District-Dehradun.
6. Mani Ram,
S/o late Shri Ram Dayal,
R/o 28, Chakrata Road, Dehradun,
District-Dehradun.

7. Inder Singh,
S/o late Shri Ram Dayal,
R/o 28, Chakrata Road, Dehradun,
District-Dehradun.
 8. Ranjeet Singh,
S/o late Shri Ram Dayal,
R/o 28, Chakrata Road, Dehradun,
District-Dehradun.
 9. Smt. Tara Devi,
W/o Shri Prem Singh,
R/o Laudhari, District Hissar,
Rajasthan.
 10. Smt. Ramo Devi,
W/o Shri Prabhu Singh,
R/o P.S. Shahpur, Ahmedabad,
Gujrat.
 11. Smt. Maya Devi,
W/o Shri Hari Singh,
R/o 28, Chakrata Road, Dehradun,
District-Dehradun.
 12. Sarwan Kumar,
S/o late Shri Hari Singh,
R/o 28, Chakrata Road, Dehradun,
District-Dehradun.
 13. Raj Kumar,
S/o late Shri Hari Singh,
R/o 28, Chakrata Road, Dehradun,
District-Dehradun.
 14. Smt. Kumad,
W/o Shri Gyan Chand,
R/o 28, Chakrata Road, Dehradun,
District-Dehradun.
- Respondents.

08.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Ramji Srivastava, Advocate for the petitioner and Sri Kanwaljeet Singh, Advocate for the respondents no. 2 to 14.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 7th October, 2005 (Annexure 8 to the writ petition).

Counsel for the petitioner has submitted that the amendment is formal in nature and due to human error the amendment is necessitated.

Sri Kanwaljeet Singh appearing on behalf of the respondents has submitted that the amendment is malafide and cannot be allowed in order to wriggle out the admission already made by the petitioner, Sri Kanwaljeet Singh appearing for the petitioner has referred paragraph 26 of the judgment of the apex Court in Salem Advocate Bar Association v. Union of India (2005) 6 SCC 344 to the following effect:-

“26. Order 6 Rule 17 of the Code deals with amendment of pleadings. By amendment Act 46 of 1999, this provision was deleted. It was again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision.”

I have considered the observation made by the Apex Court. Their lordships of the Supreme Court have observed that frivolous amendment should not be allowed. Now I am dealing with the amendment sought in the present case as to whether the same is frivolous or not.

Factual Matrix of the case with reference to Suit No. 210 of 1983 and 292 of 1983

Briefly stated, a suit has been filed by the respondents no. 2 to 5 being Suit No. 292 of 1983 praying for a decree of declaration stating therein that they are real owners of the property. A written statement has been filed by the petitioners denying the plaint averments. Similarly another suit has been filed by the petitioner being Suit No. 210 of 1983 to the following effect:-

“A) A decree cancelling the sale deed dated 6.5.1982 executed by the defendants 1 (now deceased) and 2 on behalf of the plaintiff in favour of the defendants 3 (now deceased) to 5 of one sixth share in property no. 30 Nari Shilp Mandir Marg, Dehradun, which has been registered in the office of the Sub-Registrar, Dehradun in Book 1 Volume 1907 on pages 256/259 at no. 355 on 27.5.1982.

B) Cost of the suit be awarded in favour of the plaintiff against the defendants.

C) Any other relief which the learned court may deem fit and proper under the circumstances of the case be also awarded in favour of the plaintiff against the defendants.”

In brief, the whole case of the plaintiff/respondents in Suit No. 292/1983 is that 1/6th share of Nathiram was sold in auction proceedings in execution of the decree in Suit No. 83 of 1962 and the sale certificate was also issued in favour of the defendant and the plaintiff has sought a declaration that entire

transaction in favour of the defendant/petitioner is *benami* which the defendant has denied in the written statement.

However the defendant, who is a plaintiff in the suit No. 210 of 1983 has alleged that he has purchased 1/6th share of the Nathiram and of Sri Shanker Lal and was delivered the possession.

Further it has been stated that Sri Mani Ram S/o Ram Dayal and Sri Ranjeet S/o Sri Ram Dayal prevailed upon him to appoint them as power of attorney holder and they executed a sale deed in favour of defendants 3 and 4 namely Smt. Munni Devi W/o Sri Musaddi Lal and Smt. Pushpa Chauhan, W/o Sri Ranjeet Singh. Relevant averments to that effect are quoted below:-

“3. That the plaintiff was delivered possession over one-sixth share in the property.

4. That the defendants 1 (now deceased) and 2 had prevailed upon the plaintiff to appoint them as their attorney. The plaintiff accordingly appointed the defendants 1 (now deceased) and 2 as their attorney by a Power of Attorney dated 25.3.1975.

5. That the defendants 1 (now deceased) and 2 have grossly abused their positions as attornies. They have misconceived themselves.

6. That the defendants 1 (now deceased) and 2 have executed a sale deed of the plaintiff's one-sixth share in the property no. 30 Nari Shilp Mandir Marg, Dehradun fraudulently and collusively in favour of the defendants 3 (now deceased) to 5 for a sum of Rs. 6000/- on 6.5.1982 without informing the plaintiff.

7. That the defendant no. 3 (now deceased) is defendants 1 (now deceased) and 2's brother's wife; the defendant no. 4 is the wife of the defendant no. 2 and the

defendant no. 5 is the son of the defendant no. 1 (now deceased)."

The petitioner therefore has sought the cancellation of sale deed dated 6.5.82. Original paragraphs 14 and 25 of written statement are quoted below:-

"14 That with regard to the contents of para no. 14 of the plaint, only this much is admitted that the plaintiff had executed Power of Attorney on 25.3.75 which was later cancelled. Rest of the allegations raised in this paragraph are wrong and hence denied. The plaintiff is put to strict proof of the same.

25. That all the documents pertaining to purchase of the said property her in possession of the defendant till 25.3.75 when the deceased plaintiff with the aid of her husband and other members of her family fraudulently got a Power of Attorney executed from the defendant in regard to the said property."

The defendant/petitioner has filed an application for amendment to the following effect in Suit No. 292 of 1983:-

"8. That by way of proposed amendment, the defendant seek leave of the Court to replace the word "plaintiff" by the word "defendant" in third line of para 14 of the written statement.

9. That by way of proposed amendment, the defendant seek leave of the court to replace the word "husband" by the word "sons" in fifth line of para 25 on page 8 of the written statement."

Objections were filed by the plaintiffs. The amendment was rejected by the court below without giving any reasons.

A perusal of the plaint of Suit No. 210 of 1983 filed by the plaintiff/petitioner shows that the petitioner has specifically taken the plea that son of Ram Dayal i.e. husband of the

plaintiff in Suit No. 292 of 1983 and Sri Ranjeet S/o Sri Ram Dayal have prevailed upon them to execute the power of attorney in their favour and the same was executed by the petitioner who is the plaintiff in Suit No. 210 of 1983 and as such the amendment in paragraph 25 of the written statement will not change the nature of the suit. Petitioner from the very beginning has stated about the role of the sons of the plaintiff and has sought the cancellation of the sale deed made by them and as such the amendment will neither change the cause of action nor it will amount to inconsistent pleadings. Further the same is also not bonafide.

Legal Position Regarding Amount

In ***Rajesh Kumar Aggarwal and other Vs. K.K. Modi and others [2006 (2) ARC 368]***, it has been observed as under:-

“16. The object of the rule is that Courts should try the merit of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

23. We shall now consider the judgments cited by learned Senior Counsel for appellants:

1. M/s Ganesh Trading Co. v. Moji ram, (1978) 2 SCC 91.

This Court held that the main rules of pleadings in Order VI, CPC, 1908, show that provision for the amendment of pleadings object to such terms as to costs and giving to all parties concerned necessary are intended for promoting the ends of justice and not for defeating them. This Court further held that the amendment only sought to live notice to the defendant on facts which the plaintiff would and could have

tried to prove in any case. Such notice was given only by way of abundant caution so that no technical objection can be taken that what was sought to be proved was outside the pleadings.

2. *Jai Jai Ram Manohar Lal v. naiotnal Buldign Material Supply, Gurgaon, 1969, 1969 (1) SCC 869, it was held that a partly cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide or that by his blunder he had cause injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.*

3. *Raghu Thilak D. John v. S. Rayappan and others, (2001) 2 SCC 472: 2001 ARC 393,*

Sethi, J. speaking for the Bench has observed that the amendment sought would change the nature of the suit originally filed was not a reason for refusing application for amendment and that the dominant purpose of Order VI, Rule 17 was to minimise litigation and that the plea that the relief sought for by way of amendment was barred by time is arguable in the circumstances of the case. This Court further observed in Para 5 as under:

“5. After referring to the judgments in Charan Das v. Amir Khan, AIR 1921 PC 50; L.J. Leach and Co. Ltd. v. Jardine Skinner and Co., AIR 1957 SC 357; Ganga Bai v. Vijay Kumar, (1974) 2 SCC 393; Ganesh Trading Co. v. Moji Ram, (1978) 2 SCC 91 and various otyher authorities, this

Court in B.K. Narayana Pillai v. Parameshwara Pilla, (2000) 1 SCC 712 : 2001(1) ARC 5 held : (SCC p. 715, Para 3)

3. *The purpose and object of Order VI, Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that Courts while deciding such prayer should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties.*

Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.

In ***Sampath Kumar v. Ayyakannu and another, AIR 2002 SC 3369*** the Hon'ble Supreme Court held that amendment of pleadings is permissible even if the version of a suit for permanent injunction into a suit for declaration for title and recovery of possession is said to be changed for the reason that it would violate multiplicity of litigation, and in case where an independent suit is maintainable, there is no reason as to why same relief cannot be sought by an amendment in the plaint. In order to curtail the multiplicity of the legal proceedings, amendment should be allowed. While deciding the said case, the Hon'ble Supreme Court placed reliance upon its earlier judgments in ***Mst. Rukhmaal v. Lal Laxminarayan and others, AIR 1960 SC 335***, and ***Siddaligamma and another, v. Mamtha Shenoy,***

(2001) 8 SCC 561 : 2002 SCFBRC 17. The Hon'ble Supreme Court further held that the such an application should be allowed even if it is filed at a belated stage. The Supreme Court further held that it is not permissible for the trial Court to examine the correctness or genuineness of the contents of the application at the time of entertainment stage in such an application, observing as under:-

“The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment.”

The amendment has been refused only on the technical ground. The law regarding amendment is very much clear as has been held in **M/s Estralla Rubber Vs. Dass Estate 2001(3) Civil Court Cases 663 (S.C.)** after relying upon the judgment of **B.K. Pillai v. Parameshwaran Pillai and another (2000) 1 SCC 712**. The apex court has observed as under:-

“3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the

administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.”

In the case of **B.K.N Pillai Vs. P. Pillai and another 2000 (38) AIR S.C. Page 338**, the Apex Court has observed as under:-

“The purpose and object of Order 6 Rule 17 CPC is to allow either partly to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.”

In **Muni Lal v. Oriental Fire and General Insurance Co. Ltd., AIR 1996 SC 642**, the Hon’ble Apex Court held that the relief of amendment should be granted to “render substantial justice without causing injustice to the other party or violating fair-play and the Court should be entitled to grant proper relief even at the stage of appellate forum.” Similar view has been reiterated in **Jagdish Singh v. Nathu Singh, AIR 1992, SC 1604**.

In **Smt. Ganga Bai v. Vijay Kumar, AIR 1974 SC 1126**, the Hon’ble Supreme Court observed as under:-

“The power to allow an amendment is undoubtedly wide and may, at any stage, be properly exercised in the interest of justice, the law of limitation notwithstanding, but the exercise of such far-reaching discretionary Power is governed by judicial consideration and wider the discretion greater ought to be the care and circumspection on the part of the Court.”

In ***M/s Ganesh Trading Co. V. Maoji Ram, AIR 1978 SC 484***, the Hon’ble Supreme Court observed that where amendment is found to be necessary for promoting the ends of justice and not for defeating it, the application should be allowed, Similar view had been reiterated in ***B.K.N. Pillai v. P. Pillai and another, AIR 2000 SC 614 : 2000 SCFBRC 32***.

In ***Ramesh Kumar v. Kesho Ram, AIR 1992 SC 700 : 1992 SCFBRC 322***, the Hon’ble Supreme Court observed as under::

“The normal rule is that in any litigation the rights and obligations of parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspect which bear on the moulding of the relief occur the Court is not precluded form taking a ‘cautious cognizance’ of the subsequent changes of the fact and law to mould the relief.”

Thus in view of the above, the amendment of the pleadings should ordinarily be allowed if the amendment is found to be necessary for just and proper decision of the controversy, if it does not alter the nature of the suit or takes away the accrued right of the parties.

Exercise of Jurisdiction under Article 226/227 of the Constitution of India

Practice remand has been depreciated in the judgment of ***Smt. (Dr.) D. Kaur v. Smt. Kanti Khare and others, 1981 ARC Page 664***. Relevant observations are quoted below:-

“We are of the view the High Court need not have remanded the case to the Rent Control and Eviction officer but should have decided the question itself on the basis of evidence which was already led by the parties. We would, therefore, set aside the decision of the High Court and remand the case to the High Court and remand the case to the High Court with a direction that the matter may be disposed of anew by a Division Bench of the High Court according to law in the light of the observations contained in this judgment.”

No findings have been recorded as to how amendment cannot be allowed or it will change the cause of action and as such it will be jurisdictional error liable to be corrected in view of the judgment of the apex Court in ***Kishor Kumar Khaitan and another Vs. Praveen kumar Singh (2006) 3 SCC 312***. The relevant observations in the above said case are quoted below:-

“13. The jurisdiction under Article 227 of the Constitution may be restrictive in the sense that it is to be invoked only to correct errors of jurisdiction. But when a court asks itself a wrong question or approaches the question in an improper manner, even if it comes to a finding of fact, the said finding of fact cannot be said to be rendered with jurisdiction and it will still be amenable to correction at the hands of the High Court under Article 227 of the Constitution. The failure to render the necessary findings to support its order would

also be a jurisdictional error liable to correction. Here the jurisdiction to grant an interim mandatory injunction could be exercised on entering a finding that on the day the order for maintaining the status quo was passed, the plaintiff was in possession and a day after the interim order was passed he was in fact dispossessed.”

(3) Certiorari, under Article 226 of the Constitution is issued for correcting gross errors of jurisdiction, i.e., ...(iii) acting in the grant disregard of law or rules of procedure or acting in violation of principles of natural justice where there is no procedure specified and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised or grave injustice has occasioned thereby, the High Court may step into exercise its supervisory jurisdiction.

It is evident from the facts of the present case that the court below has not recorded any findings in order to support its order.

Thus no useful purpose will be served by remanding the matter inasmuch as suit will be delayed.

I have already held that the pleadings, which have been sought to be introduced by way of amendment being already available in Suit No. 210 of 1983 and as such the amendment being necessary for disposal of the suit, deserves to be allowed. Both the parties will be at liberty to file objections in order to plea taken by way of amendment.

In view of the above, a writ of certiorari is issued quashing the order dated 07.10.2005 rejecting the amendment application dated 26.09.2005 passed by the Additional Civil Judge (Junior Division), Dehradun in Original Suit No. 292 of 1983 Smt. Jayanti Devi Vs. Hukam Singh. However, both the

suits are expedited and directed to be decided within four months from date of presentation of the certified copy of the order.

Subject to the aforesaid observations, writ petition is allowed.

No order as to costs.

(Rajesh Tandon, J.)

08.08.2006

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